

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

THE FOX GROUP, INC.,

Plaintiff,

v.

CREE, INC.,

Defendant.

Civil Action No. 2:10cv314-RBS/FBS

**PLAINTIFF, THE FOX GROUP, INC.'S,
OPPOSITION TO DEFENDANT, CREE, INC.'S,
MOTION TO RESCHEDULE TRIAL DATE**

Plaintiff, The Fox Group, Inc. (“Fox”), opposes Cree, Inc.’s (“Cree’s”), motion to reschedule the trial date from the agreed-upon date, set by the Court, of July 11, 2011. Pushing the trial date any later would only serve to delay the judicial process and unduly prejudice Fox.

In this Court’s Rule 26(f) Order, the Court originally set an outside date for trial of May 23, 2011, (Dkt. No. 32), which is in line with the typical pace anticipated by plaintiffs, including Fox, in the Eastern District of Virginia. *See* Judicial Business of the United States, 2009 Annual Report of the Director, Table C-5 (identifying current pendency of cases in the Eastern District of Virginia as 10 months). At the request of Cree, Fox agreed to extend the schedule by almost two months, and lead counsel for both parties agreed to the July 11, 2011 trial date. Although Fox seeks an expeditious trial in this matter, it agreed to move the trial into July to accommodate the parties and, of course, the Court’s calendar.

The parties discussed and agreed to a trial date in advance of the parties’ Rule 16(b) Conference. Lead and local counsel for both parties conferred and agreed on a July 11, 2011,

trial date. Cree's counsel's agreement to that date was reiterated both during conference calls between the parties as well as when local counsel met with the Court's Courtroom Clerk to set a trial schedule. Although Fox wishes to be cooperative, Fox should not be prejudiced by additional delay if the agreed-upon trial date is no longer acceptable to Cree.

If the trial start date is adjusted at this point, it should be moved forward, closer to the original May 23, 2011, date set by the Court in the Rule 26(f) Pretrial Order. (Dkt. No. 32). Fox suggested this to Cree and provided alternative dates in June (June 27-July 8, 2011) and July (July 18-29, 2011). Cree rejected these alternative proposals. Moving the trial into August 2011, as Cree now suggests, would create a conflict for Fox's lead counsel. Pushing the trial back yet another month or two into September or October 2011 would result in a 15- or 16-month pendency for this case. This timeframe far exceeds the typical pendency of cases in the Eastern District of Virginia, and unduly prejudices Fox by preventing Fox from trying its case on its desired and anticipated timeframe. If lead counsel for Cree cannot accommodate the trial date of July 11, 2011, that was set by the Court with both parties' agreement, or if Cree cannot find an alternate lead counsel among the two substantial firms and dozens of attorneys representing Cree in this matter, then Fox requests that the trial date be moved earlier two weeks to June 27, 2011.

Counsel is mindful of and seeks to accord opposing counsel all reasonable courtesy. Unfortunately, granting courtesy here will simply shift the inconvenience and unduly prejudice Fox. Fox requests that the Court keep the scheduled trial date or move the trial earlier to June 27, 2011.

Dated: December 14, 2010

Respectfully submitted,

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2010, I will serve the foregoing by electronic mail to the following:

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